



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
<http://www.epa.gov/region08>

SEP 10 2009

Ref: 8P-W-WW

Dennis Fewless, Director
Division of Water Quality
North Dakota Department of Health
918 East Divide Avenue
Bismarck, ND 58501-1947

Re: Rule-Making for Concentrated
Animal Feeding Operations (CAFOs)

Dear Mr. Fewless:

The Federal Concentrated Animal Feeding Operation (CAFO) regulations issued pursuant to the Clean Water Act (CWA) were effective on December 22, 2008, and included two important changes from the 2003 CAFO regulations: 1) the duty to apply for a permit if CAFO facilities discharge or propose to discharge; and 2) the new submission, public participation, and approval requirements relating to nutrient management plans (NMPs) for permitted CAFOs. As an authorized state for purposes of the CWA National Pollutant Discharge Elimination System (NPDES) program, North Dakota must review and revise as necessary, relevant state statutes and regulations to ensure the state authority is at least as stringent as the Federal program. Under 40 C.F.R. 123.62(e), the state has one year from the promulgation date of the 2008 CAFO rule to adopt any needed program revisions, or up to two years if statutory revisions are needed.

Petitions for review of the 2008 CAFO regulation were filed by livestock industry groups and environmental groups. These petitions were consolidated and are now pending in the U.S. Court of Appeals for the 5th Circuit (New Orleans, Louisiana). These petitions do not affect implementation of the 2008 CAFO rule nor do they affect the need for state review and revision of relevant statutes and regulations related to the CAFO program.

The Environmental Protection Agency (EPA), Region 8 is requesting that North Dakota submit a final regulatory package for approval that includes: 1) your final state CAFO regulations; 2) a revised state program description; and 3) an Attorney General statement outlining the authorities of the state program (40 C.F.R. 123.62). North Dakota's CAFO program revision will become effective for purposes of the CWA, upon EPA's approval. EPA has determined that state program revisions related to the 2008 CAFO rule are non-substantial changes to your NPDES program. As a result, we are not required to issue a public notice for state program revisions related to this rule.

Qian Caxx

Mailed 9-11-09 ds

EPA developed a CAFO regulatory crosswalk as a tool to assist states in adopting the 2008 CAFO rule. We have shared this crosswalk with your CAFO program staff and strongly encourage you to utilize this tool for the adoption of the 2008 CAFO regulations. This crosswalk should be submitted along with the final regulatory package.

I have attached, for your information, a brief description of our state oversight approach with respect to the 2008 CAFO Rule permitting requirements. I appreciate the efforts you and your staff have made thus far in working to adopt and implement the 2008 CAFO rule. If you have any questions or need additional clarification, please contact Qian Zhang, of my staff, at 303-312-6267.

Sincerely,



Sadie Hoskie, Director
Water Program

Enclosure

cc: Gary Bracht, NDDWQ